U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC 99 016 52605 Office: California Service Center Date: FEB 6 2001

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(B)

PUBLIC COPY

IN BEHALF OF PETITIONER:

[redacted]

identification data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner designs, develops, manufactures and sells internetworking systems. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a software engineer III. The director determined that the petitioner has not established that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher. The director also found that the petitioner has not shown that the beneficiary's graduate student research has been recognized as outstanding.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien is recognized internationally as outstanding in a specific academic area,
> > >
> > > (ii) the alien has at least 3 years of experience in teaching or research in the academic area, and
> > >
> > > (iii) the alien seeks to enter the United States --
> > >
> > > > (I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,
> > > >
> > > > (II) for a comparable position with a university or institution of higher education to conduct research in the area, or
> > > >
> > > > (III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

Service regulations at 8 C.F.R. 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by:

(i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition . . . ;

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from former or current employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

This petition was filed on October 19, 1998 to classify the beneficiary as an outstanding researcher in the field of software engineering. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field of software engineering as of October 19, 1998, and that the beneficiary's work has been recognized internationally within the field as outstanding.

Counsel has asserted that the beneficiary has over ten years of experience in his field. The record, however, shows that most of this experience has consisted of graduate study rather than employment in the field. The petitioner completed his graduate studies only fifteen months before filing the petition. The issue of whether the beneficiary's graduate student work is recognized as outstanding is part of the larger issue of whether the beneficiary has, in general, earned such a reputation.

Service regulations at 8 C.F.R. 204.5(i)(3)(i) state that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The regulation lists six criteria, of which the petitioner must satisfy at least two. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. The petitioner claims to have satisfied the following criteria.

Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field.

Counsel cites a number of awards which the beneficiary has received. All but one of these awards are for students, rather than for professionals actually employed in the field; the beneficiary received one award at the age of 16, before he had any

college-level training at all. The beneficiary received the remaining award from the petitioner a few months before the filing of the petition, and this award appears to be limited to employees of the petitioning company, in recognition of employee performance. The petitioner has not shown that either student awards or its own internal awards constitute major prizes or awards.

Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members.

Counsel asserts that the beneficiary is a member of such associations, but counsel does not identify the associations. The record establishes the beneficiary's membership in the Institute of Electrical and Electronics Engineers ("IEEE") and other associations, but nothing in the record indicates that outstanding achievement is a requirement for admission into membership in those organizations.

Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field.

[redacted] the petitioner's Human Resources coordinator, asserts:

> [The beneficiary] is a sought-after reviewer for both conference papers and journal submissions. [The beneficiary] regularly reviews the work of other professionals within the field for the Institute of Electrical and Electronics Engineers and the Association for Computer Machinery. . . . Most recently, he has also been invited to serve as a book reviewer on the topics of networking and Quality-of-Service for [redacted].

The record shows that the beneficiary reviewed a paper for the IEEE in 1995. The letter thanks the beneficiary for his "volunteer" work in this regard. The petitioner submits reviewer lists from several professional conferences. Many of these lists each contain hundreds of names, and some of the longer lists are only partially shown in the record; one list, containing roughly 480 names, is organized alphabetically and ends with the name "Papaspiliou." Assuming that the latter portion of the alphabet was not dramatically underrepresented, the unsubmitted remainder of the list likely contains a hundred or more additional names. The petitioner has not submitted evidence to show that only outstanding, internationally recognized researchers review papers in this manner, and given the vast number of people performing such reviews for every conference, it appears unlikely that such evidence exists.

Evidence of the alien's original scientific or scholarly research contributions to the academic field.

Obviously, the petitioner cannot satisfy this criterion simply by listing the beneficiary's past projects, and demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research. Research work that is unoriginal would be unlikely to secure the beneficiary a master's degree, let alone classification as an outstanding researcher. Because the goal of the regulatory criteria is to demonstrate that the beneficiary has won international recognition as an outstanding researcher, it stands to reason that the beneficiary's research contributions have won comparable recognition. To argue that all original research is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, as well as to presume that most research is "unoriginal."

As evidence of the beneficiary's "original and notable contributions," counsel refers to "a citation list indexing references to [the beneficiary's] work." The list shows only a handful of such citations, and all but one of these appear to be in articles by the beneficiary himself or by [redacted] one of the beneficiary's collaborators. Self-citation is not an indicator of an international reputation, or of achievements of major significance.

The petitioner submits five letters in support of the petition. Four of these letters are from faculty members of the University of Michigan, and the fifth is from an individual who states that she was previously the beneficiary's "research colleague" at the University of Michigan. The extremely narrow range of witnesses offering these letters does not demonstrate that the petitioner's reputation has traveled outside of the University of Michigan, let alone internationally as the statute requires.

Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

The petitioner has shown that the beneficiary is the co-author of several published papers. There is no evidence that the beneficiary's published work has attracted significant attention in the field, much less international recognition; as noted above, it appears that the beneficiary's published articles are rarely cited except by himself and a collaborator. To assert that publication itself is indicative of outstanding recognition, one must establish that it is a comparatively rare achievement for a researcher's work to be published at all. The petitioner in this case has made no such showing.

By way of analogy, the Service sometimes requires copies of income tax returns to establish that the petitioner has the ability to pay the proffered wage to the beneficiary. The petitioner, however, does not automatically meet this requirement by submitting a copy of an income tax return. Rather, we must consider the content of that income tax return; if it does not show that the petitioner can

afford to pay the beneficiary, then the petitioner cannot credibly argue that it met its obligation merely by supplying the copy of the tax return. Similarly, while an alien's publication record can form part of the body of evidence in this matter, it does not follow that every article out of the hundreds of thousands published every year carries equal weight.

The director denied the petition, stating that the petitioner has not shown that the research which the beneficiary conducted as a student has been recognized as outstanding, or that the beneficiary has won international recognition as an outstanding researcher in his field. The director noted that, in many fields of research, publication of one's work is almost universal, and therefore not an automatic sign of international recognition. The director observed that many of the witnesses offering statements on the beneficiary's behalf have produced dozens or even hundreds of published articles, and that in this light, the beneficiary's much more modest publication record does not appear to be outstanding in the field.

On appeal, counsel argues that the director "failed to give adequate weight to [the] evidence" submitted in support of the claim, and that the director relied "upon specious standards which are in conflict with the plain language of the Service's own regulations."

With regard to the beneficiary's prizes, counsel states that the director unjustly minimized the beneficiary's student awards. Counsel contends "the most cutting-edge scientific research and development activities in any scientific field take place in an academic setting." Assuming for the sake of argument that counsel had provided any support for this claim, research "in an academic setting" is not necessarily synonymous with research by undergraduate college students (the petitioner was an undergraduate when he received the bulk of the awards). Furthermore, the petitioner has not shown that the student awards constitute "major prizes or awards" in keeping with "the plain language of the Service's own regulations." The evidence for these awards consists of pre-printed certificates with the beneficiary's name typed or handwritten into blank spaces. Judging from the inscriptions on the certificates, the beneficiary received the awards for academic performance and for high test scores, rather than "cutting-edge scientific research and development activities."

Counsel states "[t]here is no basis in common practice of scientific research institutions to conclude that research conducted by a graduate student in partial fulfillment of degree requirements cannot be deemed to be outstanding by well-respected experts and others in the field." The director, however, made no such claim, and in fact stated that "[t]he regulation does allow for consideration of research work which is performed while working on an advanced degree," provided that "the research has been recognized within the academic field as being outstanding." The director's assertions derive from 8 C.F.R. 204.5(i)(3)(ii). It is

entirely appropriate for the director to have raised this issue because, while counsel has claimed that the beneficiary has over ten years of experience, almost all of that experience was as a graduate student. While the petitioner was employed as a software engineer during the late 1980s, the record contains no evidence that the beneficiary engaged in research at that time. Engineering and product design do not constitute research, but rather the technological application of existing research.

Counsel protests that the director "appears to have focused on the quantity of papers authored by [the beneficiary], instead of providing an analysis of whether or not such research was outstanding in nature." The director's quantitative comparison was not the sole criterion by which the director judged the beneficiary's work. Even so, the burden is on the petitioner to establish that the beneficiary's work is outstanding, not on the director to refute the petitioner's claim. The petitioner has established one independent citation of the beneficiary's published work. Nothing in the record shows that the international scientific community has judged the beneficiary's published work (whatever its quantity) as outstanding.

Counsel asserts that the director did not give due weight to the beneficiary's service "on a panel" as a judge of the work of others. There is no indication that the beneficiary has served on any actual panel of judges. An unstructured group of reviewers is not a "panel" and there is no evidence that the beneficiary ever met with the other reviewers. As discussed above, peer review is common within fields that produce published research, and given that every professional conference appears to involve hundreds of such reviewers, there is nothing in the record to show that only internationally recognized researchers are called upon to perform reviews of this kind. One letter referred to this peer review as a "volunteer" effort, rather than as a privilege or mark of distinction. In essence, peer review appears to be a form of "jury duty," expected of competent workers in the field.

Counsel protests the director's "stated basis of alleged blanket bias" on the part of the individuals who had written letters in support of the petition. Counsel states that the director's logic implies that the petitioner would have to "rely upon assessments . . . from complete strangers who have no first hand knowledge of the beneficiary's accomplishments or abilities." A flaw in counsel's reasoning is readily apparent. If the beneficiary is internationally recognized as outstanding (as the statute demands), then his work should be known to "complete strangers" as well as to the individuals who supervised the research work which they now deem to be outstanding. One need not allege conscious bias in order to establish that if no one outside of the University of Michigan and the petitioning company is acquainted with the beneficiary's work, then the beneficiary does not have an international reputation. If the beneficiary's work is not widely recognized as outstanding throughout the field, even among

"complete strangers," then it is not at all clear how the petitioner can show that the beneficiary enjoys international recognition as an outstanding researcher.

The petitioner submits a letter from Dr. [redacted] of Hewlett Packard Laboratories, who met the beneficiary when both individuals presented papers at a symposium in 1996. Dr. van Moorsel states that the beneficiary's paper "was very thought provoking and impressive and was extremely well received by the research community." "Well received" is a somewhat vague term; a positive audience response at a conference does not necessarily translate into an international reputation as an outstanding researcher.

Dr. [redacted] asserts that the beneficiary's "research has provided the networking field with an *extremely important and cost effective tool* wherein one can substantially speed up the design cycle for new network interface devices." While Dr. van Moorsel clearly holds a high opinion of the beneficiary and his work, his opinions cannot compensate for the lack of independent, objective evidence that the beneficiary is recognized internationally as an outstanding researcher. Certainly one can credit the beneficiary with particular innovations; a basic purpose of scientific research is to uncover information and develop technology that was not previously known or available. It does not follow that every researcher who actually succeeds at this task is outstanding.

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in the field of software engineering. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.